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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
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| 27317 | 7590 | 10/18/2005 | EXAMINER | |
| FLEIT KAIN GIBBONS GUTMAN BONGINI & BIANCO 21355 EAST DIXIE HIGHWAY SUITE 115 MIAMI, FL 33180 | | | FOX, CHARLES A | |
| | | | ART UNIT | PAPER NUMBER |
| | | | 3652 | |

DATE MAILED: 10/18/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/727,839

Applicant(s)

NICK ET AL.

Examiner

Charles A. Fox

Art Unit

3652

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 26 July 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-19 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-5 and 7-19 is/are rejected.
- 7) ☒ Claim(s) 6 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 03 December 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☒ None of:
- 1) ☒ Certified copies of the priority documents have been received.
 - 2) ☐ Certified copies of the priority documents have been received in Application No. _____.
 - 3) ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

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Claim Objections

Claim 10 is objected to because of the following informalities: the word operable in line 6 should read operably. Appropriate correction is required.

Claim Rejections - 35 USC § 112

The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 10-19 are rejected under 35 U.S.C. 112, first paragraph, because the specification, while being enabling for a plurality of vertical lift elements and a plurality of horizontal positioning elements, it does not reasonably provide enablement for a single lift element for raising the device or a single horizontal positioning element. The specification does not enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make the invention commensurate in scope with these claims. The specification is silent on what exactly comprises a vertical height adjustment element. There appear to be a number of elements (7,8,11) which must work together to vertically move the platform. As such the claims are not enabled based on the specification as the terminology used in the claims does not match that found in the specification. All elements in the claims must be clearly defined in the specification.

Claims 10-19 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. It is not clear what applicant is deeming a vertical height adjustment element. As above a plurality of elements are disclosed as causing the platform to move, not a single element as claimed. The claims are so indefinite at this time that an action on the merits can not be given.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent.

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claim 1 is rejected under 35 U.S.C. 102(b) as being anticipated by Bourgraf.

Bourgraf US 4,604,022 discloses a loading apparatus for a vehicle comprising:

a loading floor (14) in a loading area of said vehicle;

elements (10,19) for the vertical and horizontal adjustment of said floor relative to said vehicle;

drive elements(23,24) for driving the elements (10,19) to change the vertical and horizontal position of the floor.

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Claims 1-4 and 8 are rejected under 35 U.S.C. 102(a) as being anticipated by Haid et al. In regards to claim 1 Haid et al. US2001/0036396 A1 discloses a loading floor for a vehicle comprising:

elements (3,15) for the vertical movement of a platform (1);

drive elements (19) for vertically moving said platform;

drive elements (10) for horizontal movement of said floor.

Regarding claim 2 Haid et al. further disclose that the elements for vertical movement are parallelogram in nature and at least one of said elements is driven by said drive element (19).

In regards to claims 3 and 4 Haid et al. also disclose that the parallelogram structure also has a circular toothed configuration which engages with a threaded rod (18) for raising the platform in a vertical direction.

In regards to claim 8 Haid et al. also disclose that the drive elements are electric.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 5 and 7 are rejected under 35 U.S.C. 103(a) as being unpatentable over Haid et al. as applied to claim 1 above, and further in view of Ophardt et al. Haid et al. teach the limitations of claim 1 as above, they do not teach the drive elements as being a rack on the lower side of the loading floor Ophardt et al. teaches a load platform (1)

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with drive elements (9) provisioned on the lower side of said platform., said drive elements having a pinion that runs along a substantially horizontal rack.. It would have been obvious to one of ordinary skill in the art, at the time of invention to provide the device taught by Haid et al. with the drive elements as taught by Ophardt et al. in order to allow for a smooth transition from the toothed segment to the straight rack segment, thereby helping to keep the pinions from binding on the rack.

Claim 9 is rejected under 35 U.S.C. 103(a) as being unpatentable over Haid et al. as applied to claim 1 above, and further in view of the admitted prior art (see paragraph 49 of the specification). Haid et al. teaches the limitations of claim 1 as above, they do not teach the hatch of the vehicle as being automatically opened. The admitted prior art teaches a remote control device for a vehicle that is used to automatically open and close the hatch of said vehicle. It would have been obvious to one of ordinary skill in the art, at the time of invention to provide the device taught by Haid et al. with the remote control capabilities of the admitted prior art in order to extend or retract the device without interfering with the hatch on the vehicle.

Response to Amendment

The amendments to the claims filed on July 26, 2005 have been entered into the record. Applicants amendments to claims 1-9 have rendered the previous 35 U.S.C. rejections moot and they are hereby withdrawn.

Allowable Subject Matter

Claim 6 is objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base

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claim and any intervening claims. The closest prior art of Haid et al. does not teach or suggest a curved rack abutting a straight rack for providing the vertical and horizontal movement of the device.

Response to Arguments

Applicant's arguments filed July 26, 2005 have been fully considered but they are not persuasive. Regarding the Haid reference teaching multiple drive motors it is noted that claim 1 recites using drive elements. As such the plurality of drive elements taught by Haid et al. meet this limitation of the claim. As such all previous art rejection are hereby made final.

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

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Any inquiry concerning this communication or earlier communications from the examiner should be directed to Charles A. Fox whose telephone number is 571-272-6923. The examiner can normally be reached between 7:00-4:00 Monday-Thursday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Eileen D. Lillis can be reached at 571-272-6928. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

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